IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

CRL.A.No. 130 of 2003()

SC.172/1999 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE

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APPELLANT: ACCUSED:

PREMAN, S/O. BALAN,
PARAKANDY HOUSE, MENHANNIAM, PERAMBRA,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.736/2003 IN CRL.A.NO.130/2003

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

31/10/2007

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K.R.UDAYABHANU, J.

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Crl.A.No.130 of 2003-A

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Dated this the 31st day of October, 2007

J U D G M E N T

The appellant is the accused in S.C.No.172/1999 who stands convicted for the offence under Section 55(a) of the Abkari Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months.

2. The prosecution case is that on 22/09/1997 at about 8.30 p.m the Sub Inspector of Police, Perambra, on receipt of source information that at the bunk shop run by the accused liquor is sold to the public conducted search and recovered one bottle of 375 ml Old Port XXX Rum containing liquor upto the half bottle and another bottle containing quarter quantity and 18 empty liquor bottles, 17 soda bottles, seven empty soda bottles and Rs.415/-.

3. PWs.1 to 5 the police officials and independent witnesses to the recovery have testified as to the seizure and proved Exts.P1 to P6 documents.

4. The point stressed by the counsel for the appellant is that there is a delay of eight months in producing the material objects before the court and there is no explanation for this exorbitant delay. The recovery is dated 22/09/1997 and the material objects were produced before the court below on 06/05/1998. The counsel has relied on the decision in **Dominic v. State of Kerala [1989 (1) KLT 601],** which has been followed in subsequent decisions also, wherein the court has pointed out that from Section 36 of the Abkari Act and paragraphs 17, 26, 34, 49 and 77 of the Excise Manual it is clear that seizure should be reported to the court forthwith and request made for sending the samples for analysis.

5. In the instant case I find that the delay is about eight months and which stands not explained also. The court below has found that the seals on the seized bottles does not disclose any signs of tampering and hence, the delay is immaterial. I find that the above explanation is hardly sufficient to overcome the lapse on the part of the prosecution agency to produce the seized articles before the court which ought to have been done forthwith. In the circumstances, I find that the accused is entitled for the benefit of doubt. The findings of

the court below is set aside. The accused is acquitted. The criminal appeal is allowed.

Sd/-

K.R.UDAYABHANU,
Judge

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